

**In the High Court of Uttaranchal, at
Nainital.**

A.O. No. 558/2001

(F.A.F.O. No. 127 of 1994)

National Insurance Co. Ltd.
(Divisional Office, Allahabad) through
its Administrative Officer Appellant.

Versus

- 1- Jeevan Chandra Pant S/o Manorath Pant,
- 2- Smt. Prema Pant W/o Jeevan Chandra Pant
Both R/o 60, Hiranagar, Haldwani
District Nainital
- 3- Nazir Ahmad, Food and Vegetable
Commission Agent, R/o Simal-Gair Bazar,
District Pithoragarh .. Respondents.

Sri Prabhat Pande, learned counsel for the appellant.
Sri P.S. Rawat, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J:

This appeal, U/S 30 of the Workmen's Compensation Act, 1923, has been filed by the National Insurance Company, insurer of the Truck Canter No. U.P. -03-322 against the impugned award dated 23-2-1994, passed by the Workmen's Compensation Commissioner, Pithoragarh in W.C.A. Case No. 32/1991, Jeevan Chandra and another Versus Nazir Ahmad and another.

2. Brief facts of the case are that Dinesh @ Deepak Pant was the driver of Truck Canter No. U.P. 03-322, owned by Nazir Ahmad. On 9-5-1991 when the driver Dinesh Pant was taking the truck to Pithoragarh from Tanakpur, the truck met with an accident at Swanla, in which the driver Dinesh Pant died at the spot. The deceased at the time of accident was 29 years of age and he was getting Rs. 1,000/- per month as salary. The claimants Jeewan Chandra Pant and Smt. Prema Pant are the parents of the deceased, who have filed

the claim petition before the Workmen's Compensation Commissioner for compensation.

3- The notices of the claim petition were sent to the opposite parties, who contested the claim petition by filing the objections before the Workmen's Compensation Commissioner.

4- On the pleadings of parties, the Workmen's Compensation Commissioner framed the following issues:-

- 1- Whether on 9-5-1991, deceased Dinesh @ Deepak was working as driver on the Truck Canter U.P. 03-322, owned by Nazir Ahmad and on the aforesaid dated during the course of employment the Canter met with an accident, in which he died?.
- 2- Whether the deceased was being paid Rs. 1000/- and other allowances per month by the O.P. Nazir Ahmad? What was his age at the time of the accident?.
- 3- Whether the Truck Canter No. U.P.03-322 was insured with the Insurance Company and had valid documents at the time of the accident?.
- 4- To what amount of compensation, the claimants are entitled to get and from whom?.

5- Both the parties adduced their evidence and thereafter the court below allowed the claim of the respondent Nos. 1 and 2 for a sum of Rs. 83,968/- alongwith and interest @ Rs. 6% per annum vide impugned award dated 23-2-1994.

6- Feeling aggrieved by the aforesaid impugned award, the insurer of the offending Truck Canter No.03-322, has filed this appeal before the Allahabad High Court, which was transferred to this court after creation of new State.

7- Heard the learned counsel for the parties and perused the record.

8- The short controversy involved in this case is that- 'whether the driving licence of the driver of offending Canter was valid on the date of the accident or not?'

9- Learned counsel for the appellant has submitted that the driver of the offending vehicle was having the driving licence pertaining to the L.M.V., while he was driving the Medium Goods Vehicle, at the time of the accident, for which he was not authorized to drive. I fail to appreciate the argument advanced by the learned counsel for the appellant/insurance company because of the reason that the appellant has nowhere pleaded this factual aspect in the written statement before the court below. Further no issue was pressed by the appellant before the court below in this regard. The Workmen's Compensation Commissioner at the time of granting the award, has discussed the point with regard to the validity of the driving licence of the driver of offending truck and the learned Commissioner after having considered the evidence available on the record, observed that the driver of the offending vehicle was having valid and effective driving licence at the time of the accident.

10- I do not have any reason to disassociate myself with the findings recorded by the Workmen's Compensation Commissioner passing the impugned award. As I have already observed that there is neither any pleading in this regard advanced by the appellant, nor any issue was pressed before the court below, therefore, I don not find any infirmity in the impugned award passed by the court below.

11- The appeal lacks merit and is liable to be dismissed.

12- Accordingly the appeal is dismissed. No order as to cost.

(B.C. Kandpal, J.)

Dated: 29-09-2006
ISB